IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2666 OF 2005

G. K. MANWATKAR .. PETITIONER

Versus

UNION OF INDIA & ORS. RESPONDENTS

Mr. K. Babu Rajan for petitioner

Mr. N. V. Masurkar with Anil Singh for R-1

Mr. P. K. Rele i/b Piyush Shah for R-3

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:- 14/12/2005

P.C.

. The petitioner was appointed as Assistant Engineer on 24/11/82 in SC quota and placed at the site office at Mumbai of respondent 2 Engineers India Ltd.

2. In this petition the petitioner has challenged transfer order dated 24/8/05 issued by the respondents.

3. We have heard the learned counsel for the petitioner at some length.

4. In the petition, the petitioner has given details as regards his transfer to various places during the course of his service. The grievance of the petitioner is that his transfer to Jamnagar is malafide and, therefore, this court should quash the transfer order.

5. The learned counsel for the petitioner drew our attention to the order dated 5th February, 1998 passed by this court in Writ Petition No.187 of 1998 filed by the petitioner in which a statement made by respondent 2 therein, who is respondent 3 in this petition i.e. Resident Construction Manager, Engineers India Ltd. that as and when requirement for his background in Bombay arises his case will be considered on merits was recorded. The learned counsel contended that respondent 3 did not abide by this statement and infact after this order was passed, the persons belonging to his cadre were brought to Bombay, however his case was not considered. The learned counsel further pointed out that Shri C. S. Viswanathan had

recommended the case of the petitioner for reconsideration vide Inter Office Memorandum dated 26/8/05. Despite this the same person has filed an affidavit in this petition taking a contrary stand. He drew our attention to paragraph 35 (e), (f) and (g) of the petition and contended that the transfer order is clearly malafide and the petitioner has so stated in the petition.

6. The learned counsel relied upon certain guidelines dated 12th December, 1997 The relevant portion of the guidelines on which reliance is placed may be quoted:

> "The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt. (A), dated 3-4-1986 while deciding on the requests for posting of husband and wife at the same station and should ensure that such

> posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence."

The learned counsel submitted that the petitioner's wife is a Government of Maharashtra employee and therefore, the petitioner ought to have been retained at Bombay. He submitted that transfer of the petitioner is clearly contrary to the guidelines quoted above. The said guidelines are overlooked by the respondents.

7. The learned counsel also relied upon the judgment of Supreme Court in **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey & Ors., (2004) 12 S C C 299**. He relied on the following observations of the Supreme Court;

> 4. "Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or

> infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa). Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it."

He submitted that in the circumstances and in the light of the above observations of the Supreme Court this court should set aside the transfer order.

8. We are unable to agree with the learned counsel. Though it is contended that transfer is malafide barring vague allegations of malafides, there are no averments in the petition to substantiate this contention. No particulars of malafides have been given in the petition. Sofar as transfer orders are concerned, law is well settled by the Supreme Court. In this connection, we may refer to the judgment of the Supreme Court in **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Anr., (2001) 8 S C C 574**, where the Supreme Court has observed as under:

> "No government servant or employee of a public undertaking has any legal right to be posted forever at anyone particular place since transfer of a particular employee appointed to the class or cagtegory of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

It is clear, therefore, that in cases of employees who are appointed to the class or category of

transferable posts from one place to other transfer is not only an incidence but a condition of service and unless an order of transfer is shown to have been done in malafide exercise of power, no interference with orders of transfer is warranted.

9. Viewed in the light of this judgment, we are of the opinion that in this case also since case of malafides is not made out, no interference is necessary with the impugned order. We say so because after the order was passed by this court on 5/2/98, recording the statement made by the learned counsel for respondent 3 that the petitioner's case may be considered in fact on 11/8/2000 the petitioner was transferred to Chembur, Mumbai on 1/7/01. He was promoted as Senior Manager and on 13/5/04 he was transferred to Baroda. Therefore, the petitioner cannot be heard to say that the High Court's order was not taken into consideration by the respondents. The judgment cited by the petitioner's counsel is distinguishable on facts.

10. According to the petitioner he was earmarked to be sent to South Korea through CEIL Belapur, Navi Mumbai. Thereafter he was in fact sent to

South Korea on 18/8/04. He completed his South Korea project and returned back to Belapur on 13/12/04. He was again brought to Bombay on 30/3/05, and on 24/8/05 was sent to Jamnagar. These facts militates against any suggestion that present order is actuated by any malafides.

11. Sofar as the guidelines are concerned, on a perusal of the guidelines, we feel that they are not mandatory. Guidelines are qualified by the condition that posting of husband and wife at the same station will be made especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and, if no administrative problems are expected to result as a consequence. Reliance placed on the guidelines is, therefore, misplaced.

12. In the circumstances, in our opinion no case is made out for interference. Petition is rejected.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)